

WILMERHALE

Mark D. Selwyn

+1 650 858 6031 (t)

+1 650 858 6100 (f)

mark.selwyn@wilmerhale.com

September 3, 2013

The Honorable Paul S. Grewal  
United States Magistrate Judge  
U.S. District Court for the Northern District of California  
Courtroom 5, 4<sup>th</sup> Floor  
280 South First Street  
San Jose, CA 95113

Re: *Coordinated Adaptix Litigation*, Case Nos. 5:13-cv-01774-PSG, -01776, -01777, -01778, -01844, and -02023  
Letter Regarding Adaptix's Opposition to Proposed Scheduling Amendments

Dear Judge Grewal:

Defendants Apple Inc., AT&T Mobility LLC, Cellco Partnership d/b/a Verizon Wireless, HTC Corporation, HTC America, Inc., and Motorola Mobility LLC (collectively, "Defendants") submit this letter regarding Plaintiff Adaptix, Inc.'s ("Adaptix's") "Opposition" to Defendants' Proposed Amendments to Scheduling Orders dated August 30, 2013 ("Opposition").<sup>1</sup>

On August 22, 2013, the Court issued an Order (1) permitting Adaptix to amend its infringement contentions in the above-referenced coordinated proceedings, and (2) directing Defendants to "confer among themselves about what changes need to be made to the scheduling order and propose any necessary amended scheduling order no later than August 30, 2013."<sup>2</sup> The Court wrote: "To mitigate the burden on the defendants, the court will permit them not only to supplement their invalidity contentions, but also will give the defendants the choice (consistent with the court's schedule) of what adjustments to make to the claim construction and other pretrial deadlines."<sup>3</sup>

On August 30, 2013, consistent with the Court's Order, Defendants filed their Proposed Amendments to the Scheduling Orders ("Proposal").<sup>4</sup> Although not required by the Court's Order, as a courtesy to Adaptix and to avoid any easily-resolved scheduling conflicts, Defendants provided Adaptix with a copy of their Proposal on August 29, 2013. In response, Adaptix did not identify any scheduling conflict. Instead, and as set forth in Adaptix's Opposition, Adaptix simply identified non-conflict-related objections to Defendants' Proposal.

---

<sup>1</sup> Adaptix's Opposition appears at Dkt. No. 83 in Case No. 5:13-cv-01774, Dkt. No. 123 in Case No. 5:13-cv-01776, Dkt. No. 129 in Case No. 5:13-cv-01777, Dkt. No. 137 in Case No. 5:13-cv-01778, Dkt. No. 114 in Case No. 5:13-cv-01844, and Dkt. No. 103 in Case No. 5:13-cv-02023.

<sup>2</sup> Dkt. No. 131 in Case No. 5:13-cv-01778 and Dkt. No. 100 in Case No. 5:13-cv-02023 at 4:12-14.

<sup>3</sup> *Id.* at 3:21-24.

<sup>4</sup> Defendants' Proposal appears at Dkt. No. 82 in Case No. 5:13-cv-01774, Dkt. No. 122 in Case No. 5:13-cv-01776, Dkt. No. 128 in Case No. 5:13-cv-01777, Dkt. No. 136 in Case No. 5:13-cv-01778, Dkt. No. 113 in Case No. 5:13-cv-01844, and Dkt. No. 102 in Case No. 5:13-cv-02023.

WILMERHALE

The Honorable Paul S. Grewal  
September 3, 2013  
Page 2

Defendants understood the Court's August 22 Order to permit Defendants to identify what changes—if any—would be necessary to account for Adaptix's amended infringement contentions. Defendants submitted just such a proposal, tailored in a way that will result in minimal deviation from the current case schedule and will accommodate Adaptix's apparently long-standing, but only recently disclosed, scheduling conflict with the *Markman* tutorial and hearing dates that the Court set at the Case Management Conference with the consent of the parties. It was not Defendants' understanding that the Court gave Adaptix leave to submit an "Opposition" to Defendants' Proposal, or intended that Defendants' Proposal would give rise to a briefing exercise by the parties.

If the Court intends to consider Adaptix's Opposition for purposes of amending the schedule in the coordinated cases, then Defendants respectfully request permission from the Court to brief the rationale behind their Proposal and to respond to the arguments presented in Adaptix's Opposition.

Sincerely yours,

/s/ Mark D. Selwyn  
Mark D. Selwyn  
Counsel for Apple Inc.

/s/ Christopher A. Hughes  
Christopher A. Hughes  
Counsel for AT&T Mobility LLC

/s/ Mark D. Flanagan  
Mark D. Flanagan  
Counsel for Cellco Partnership  
d/b/a Verizon Wireless

/s/ Fred I. Williams  
Fred I. Williams  
Counsel for AT&T Mobility LLC,  
HTC Corporation, and HTC America, Inc.

/s/ Tyler T. VanHoutan  
Tyler T. VanHoutan  
Counsel for Motorola Mobility LLC